

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Pending before the Court is the Motion for Attorney’s Fees, (ECF No. 3515), filed by Defendant Todd C. Engel (“Defendant”). The Government filed a Response, (ECF No. 3516), to which Defendant filed a Reply, (ECF No. 3517).

For the reasons discussed below, the Court **DENIES** Defendant's Motion for Attorney's Fees.

I. BACKGROUND

On March 2, 2016, the Grand Jury indicted Defendant by Superseding Indictment with sixteen counts related to a confrontation on April 12, 2014, with the Bureau of Land Management (“BLM”) Officers in Bunkerville, Nevada. (Superseding Indictment, ECF No. 27). Defendant was grouped with Tier 3 defendants and was part of the first group of defendants that went to trial. (Order, ECF No. 1098). Defendant represented himself during the majority of the trial. However, on the twenty-first day of trial, this Court terminated Defendant’s right to represent himself and appointed standby counsel to represent him instead. (Mins. Proceeding: Jury Trial Day 21 at 1–2, ECF No. 1750). At the conclusion of Defendant’s trial, the jury found Defendant guilty of Count Twelve, Obstruction of the Due

1 Administration of Justice, and Count Sixteen, Interstate Travel in Aid of Extortion. (See
 2 generally Jury Verdict, ECF No. 1903).

3 On August 6, 2020, the Ninth Circuit vacated Defendant's conviction, finding that "the
 4 district court's termination of [Defendant's] right to represent himself violated the Sixth
 5 Amendment." *United States v. Engel*, 968 F.3d 1046, 1048 (9th Cir. 2020). On August 28,
 6 2020, the Ninth Circuit entered its mandate. (USCA Order Mandate, ECF No. 3509). On
 7 September 4, 2020, this Court spread the mandate on the record and scheduled a new trial for
 8 October 19, 2020. (Order Mandate, ECF No. 3511).

9 On September 8, 2020, the Government filed a Motion to Dismiss pursuant to Fed. R.
 10 Crim. P. 48(a). (See generally Gov.'s Mot. Dismiss ("MTD"), ECF No. 3512). Specifically,
 11 the Government explained that after "review[ing] and evaluat[ing] the evidence relating to
 12 defendant Engel against the backdrop of the passage of time and changed circumstances since
 13 his 2017 trial" it determined "that dismissal is warranted in the interests of furthering the ends
 14 of justice." (*Id.* 4:9–12). The Government further stated it did not intend to re-indict the
 15 Defendant for the offense. (*Id.* 4:12–13). On September 9, 2020, the Court granted the
 16 Government's Motion and entered an Order dismissing the case with prejudice. (Order, ECF
 17 No. 3513). On November 7, 2020, Defendant filed the present Motion for Attorney's Fees.
 18 (Mot. Att'ys Fees, ECF No. 3515).

19 **II. LEGAL STANDARD**

20 The Hyde Amendment authorizes the award of attorney's fees in a privately defended
 21 criminal case to a "prevailing party" where the Court finds that the position of the United States
 22 was vexatious, frivolous, or in bad faith. *See United States v. Sherburne*, 249 F.3d 1121, 1126
 23 (9th Cir. 2001). Although modeled after the Equal Access to Justice Act ("EAJA"), the Hyde
 24 Amendment has a more demanding burden of proof.

1 *United States v. Manchester Farming P'ship*, 315 F.3d 1176, 1182 (9th Cir.), *opinion amended*
 2 *on denial of reh'g*, 326 F.3d 1028 (9th Cir. 2003).

3 “Whether a party is ‘prevailing’ is a threshold question for purposes of the Hyde
 4 Amendment.” *See United States v. Brattin*, No. 2:15-cv-00037, 2016 WL 111184224 at *4 (D.
 5 Nev. Nov. 30, 2016) (citation omitted). The Ninth Circuit has interpreted “prevailing party” to
 6 mean “one who has gained by judgment or consent decree a material alteration of the legal
 7 relationship of the parties.” *United States v. Chapman*, 524 F.3d 1073, 1089 (9th Cir. 2008);
 8 *Perez-Arellano v. Smith*, 279 F.3d 791, 794 (9th Cir. 2002) (defining the terms under the Equal
 9 Access to Justice Act); *United States v. Campbell*, 291 F.3d 1169, 1171 (9th Cir. 2002)
 10 (extending the *Perez-Arellano* definition to the Hyde Amendment). The prevailing party must
 11 also have “receive[d] at least some relief on the merits of his claim.” *Campbell*, 291 F.3d at
 12 1171.

13 Moreover, the Hyde Amendment places the burden on the defendant in the underlying
 14 case to prove that the government’s position was either vexatious, frivolous, or in bad faith. *Id.*
 15 A defendant need only prove one of the three to recover. *Id.* Because the statute specifically
 16 incorporates the filing requirements of the EAJA, an award of attorney’s fees is granted
 17 pursuant to the procedures and limitations provided for under the EAJA.

18 **III. DISCUSSION**

19 The parties dispute whether Defendant was the “prevailing party” pursuant to the Hyde
 20 Amendment. Defendant contends that he was the prevailing party at two stages of the
 21 litigation: (1) he prevailed on appeal because the Ninth Circuit vacated his conviction, and (2)
 22 he prevailed when the Government voluntarily dismissed the remaining charges against him
 23 with prejudice. (Mot. Att’ys Fees 1:21–26, 15:25–27, ECF No. 3515); (Reply 2:27–11, ECF
 24 No. 3517). In rebuttal, the Government contends that Defendant was not the prevailing party at
 25 either stage because neither action substantively adjudicated his guilt or innocence. (Resp.

1 5:16–6:9, 7:2–11, ECF No. 3516). Therefore, Defendant cannot be said to be the prevailing
2 party when neither action addressed the merits of his claim. (Resp. 5:16–6:9, 7:2–11). The
3 Court will first turn to the Ninth Circuit’s decision.

4 **A. The Ninth Circuit’s Decision**

5 As stated, Defendant first contends that he was the prevailing party when the Ninth
6 Circuit vacated his judgment of conviction. (Mot. Att’ys Fees 1:21–26, 15:25–27); (Reply
7 2:27–11, ECF No. 3517). To determine whether Defendant is the prevailing party for purposes
8 of the Hyde Amendment, the Court will begin by examining whether the Ninth Circuit’s
9 decision awarded Defendant “at least some relief on the merits of his claim.” *Campbell*, 291
10 F.3d at 1171.

11 On appeal, the Ninth Circuit determined that “the district court’s determination of
12 Engel’s right to represent himself violated the Sixth Amendment.” *Engel*, 968 F.3d at 1052.
13 The *Engel* court further articulated that “a violation of a defendant’s Sixth Amendment right to
14 self-representation is a structural error.” *Id.* (citing *McKaskle v. Wiggins*, 465 U.S. 168, 177–79
15 & n.8 (1984)). In *United States v. Chapman*, the Ninth Circuit held that the defendants were not
16 prevailing parties even though the district court dismissed the indictment against them to
17 sanction the government for *Brady/Giglio* discovery violations. *Chapman*, 524 F.3d at 1089–
18 90. “The court dismissed the indictment based on the government’s failure to disclose
19 documents and the prosecutor’s affirmative misrepresentations to the court.” *Id.* at 1089. The
20 Ninth Circuit highlighted that the district court never suggested that this prosecutorial
21 misconduct was relevant to the “[d]efendant’s guilt or innocence . . . [because] relief was not
22 based on the merits.” *Id.* at 1090 (emphasis in original).

23 Here, the Ninth Circuit’s decision did not implicate the merits of Defendant’s claims.
24 Instead, the Ninth Circuit vacated Defendant’s conviction because the district court committed
25 a “structural” or procedural error in violating Defendant’s Sixth Amendment right to self-

1 representation. *See Engel*, 968 F.3d at 1052. Thus, as in *Chapman*, Defendant obtained a
 2 favorable procedural ruling from the Ninth Circuit that was not relevant to his underlying guilt
 3 or innocence. Accordingly, Defendant is not entitled to Hyde Amendment relief based on the
 4 Ninth Circuit’s decision because he was not the prevailing party.

5 **B. The Government’s Voluntary Dismissal**

6 Defendant next argues that the Government’s voluntary dismissal with prejudice
 7 rendered him the prevailing party because he is no “longer subject to prosecution” for the
 8 criminal charges brought against him. (Reply 2:23–3:25); (*see also* Mot. Att’ys Fees 15:25–27).
 9 “There can be no doubt that a dismissal with prejudice materially alters the legal relationship of
 10 the parties, as it precludes the government from bringing a prosecution that it otherwise would
 11 be entitled to bring.” *Chapman*, 524 F.3d at 1089. The difficulty arises when determining
 12 whether the Government’s dismissal provided Defendant “at least some relief on the merits of
 13 his claim.” *Campbell*, 291 F.3d at 1171. Here, the Court finds it does not.

14 As stated above, the Government, in dismissing with prejudice the charges against
 15 Defendant, explained that after “review[ing] and evaluat[ing] the evidence relating to defendant
 16 Engel against the backdrop of the passage of time and changed circumstances since his 2017
 17 trial” it determined “that dismissal is warranted in the interests of furthering the ends of
 18 justice.” (MTD 4:9–12). Defendant contends that the Government’s decision is an implicit
 19 admission it doubted the sufficiency of evidence and relative strength of its case, because the
 20 Government would have re-tried him had it “concluded that the evidence would have been
 21 sufficient to convict him once again . . .” (Reply 3:13–25). However, the Government’s
 22 decision to voluntarily dismiss with prejudice the charges against Defendant may rest on any
 23 number of factors, the vast majority of which have nothing to do with Defendant’s guilt or
 24 innocence or whether the Government acted improperly. *See Brattin*, 2016 WL 11184224, at *5
 25 (finding that the defendant was not the prevailing party where the government voluntarily

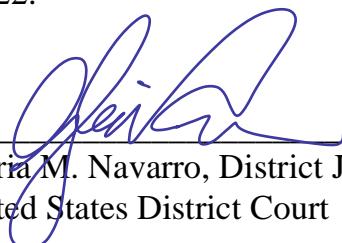
1 dismissed the indictment with prejudice after the defendant dismissed his appeal in the first
2 case).

3 At its core, Defendant's argument is that he was the prevailing party because he obtained
4 his desired relief. (Reply 2:22–3:28). However, the Ninth Circuit “require[s] a prevailing party
5 to have ‘received at least some relief *on the merits* of his claim.’” *Id.* (quoting *Campbell*, 291
6 F.3d at 1172) (emphasis in original). Defendant is not a prevailing party for purposes of the
7 Hyde Amendment because the Government's voluntarily dismissal is not a disposition on the
8 merits. *See Brattin*, 2016 WL 11184224, at *5 (concluding that the defendant was not the
9 prevailing party despite the government voluntarily dismissing the indictment with prejudice
10 because the dismissal “did not constitute relief on the merits of the case”); *United States v.*
11 *Guron*, No. 1:08-cr-119-01, 2022 WL 2232269, at *5 (W.D. Mich. June 3, 2010) (“[T]he order
12 of dismissal does not determine the merits of defendant's guilt or innocence.”). Accordingly,
13 Defendant is not entitled to Hyde Amendment relief, and the Court denies his Motion for
14 Attorney's Fees.

15 **IV. CONCLUSION**

16 **IT IS HEREBY ORDERED** that Defendant Todd C. Engel's Motion for Attorney's
17 Fees, (ECF No. 3515), is **DENIED**.

18 **DATED** this 18 day of November, 2022.

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23 Gloria M. Navarro, District Judge
24 United States District Court
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